Supreme Court, U.S.
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No. 92-295

In The

Supreme Court of the United States

October Term, 1992

LANCE LUFKIN,

Petitioner,

vs.

CHARLES A. McCALLUM, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

INA B. LEONARD
Counsel of Record
CINDY S. WAID
Attorneys for Respondents
The University of Alabama System
Mortimer Jordan Hall, Room 112
Birmingham, Alabama 35294-2010
(205) 934-3474

2661
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTIONS PRESENTED FOR REVIEW

Whether the Eleventh Circuit correctly applied this Court's rulings in *Owens v. Okure*, 488 U.S. 235 (1989), *James B. Beam Distilling Co. v. Georgia*, 111 S. Ct. 2439 (1991) and *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 111 S. Ct. 2773 (1991) in holding that the appropriate statute of limitations to apply to Petitioner's § 1983 action is that applied to the parties in *Owens v. Okure*, the state's general or residual statute of limitations for personal injury actions?

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STATEMENT OF THE CASE

The Petitioner, a temporary lecturer at the University of Alabama at Birmingham for the academic years 1984 to 1987, received notice that he would not be rehired for the next academic year on May 27, 1987. Petitioner sought legal counsel, who advised him that the statute of limitations period for § 1983 actions in Alabama was six years. This advice was based on *Jones v. Preuit & Mauldin*, 763 F.2d 1250 (11th Cir. 1985). Alabama, like many states, has two personal injury limitations statutes. The trespass to person statute of limitations is six years. Ala. Code § 6-2-34(1) (1975). Alabama's general or residual statute of limitations for personal injury actions is two years. Ala. Code § 6-2-38(1) (Supp. 1991). The Court of Appeals for the Eleventh Circuit in *Jones v. Preuit & Mauldin* applied this Court's ruling in *Wilson v. Garcia*, 471 U.S. 261 (1985) and adopted the trespass to person six year statute of limitations as the appropriate limitations period for § 1983 actions in Alabama.

On January 10, 1989, this Court clarified its holding in *Wilson v. Garcia* and held in *Owens v. Okure* that courts should apply the general or residual personal injury limitations to § 1983 actions in states with more than one personal injury statute of limitations. 488 U.S. 235. This Court vacated and remanded *Jones v. Preuit & Mauldin* for further consideration in light of *Owens v. Okure*, 489 U.S. 1002 (1989). The Court of Appeals on remand applied the two year general or residual personal injury statute of limitations and dismissed the plaintiff's action as untimely. 876 F.2d 1480 (1989).

The Petitioner filed his lawsuit on September 20, 1990, twenty-one months after the ruling in *Owens v. Okure*. At the time of the *Owens* decision, this Petitioner had almost five months in which to file his complaint and still be within the two year statute of limitations.

The Court of Appeals in the opinion below correctly ruled that the case of *Owens v. Okure* announced a new rule and that the new rule was applied to the parties in that case. Thus, the Court of Appeals followed this Court's ruling in *James B. Beam Distilling Co. v. Georgia*, 111 S. Ct. 2439 (1991), and applied the *Owens* decision retroactively to the Petitioner's § 1983 action. *Lufkin v. McCallum, et al.*, 956 F.2d 1104 (1992). This Court's decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 111 S. Ct. 2773 (1991) convinced the Court of Appeals that statute of limitations questions are not exempt from the *Beam* ruling.

The Court of Appeals did not make a ruling that this Court had overruled *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). It did no more than quote Justice Souter on *Beam's* limitation on the *Chevron Oil* analysis and apply this limitation to the Petitioner's case. *Lufkin v. McCallum, et al.*, 956 F.2d at 1107.

REASONS FOR DENYING THE WRIT

The Court of Appeals for the Eleventh Circuit did not erroneously decide an important question of federal law that should be resolved by this Court as Petitioner contends. The questions of federal law that were at issue in this lawsuit were already resolved by this Court in *Owens v. Okure*, 488 U.S. 235 (1989), *James B. Beam Distilling Co. v. Georgia*, 111 S. Ct. 2439 (1991), and *Lampf, Pleva, Lipkind, Prupis, Petigrow v. Gilbertson*, 111 S. Ct. 2773 (1991), before Petitioner's case was heard by the Court of Appeals. All the lower court did was correctly apply the above referenced decisions of this Court to the Petitioner's case.

This Court revisited the issue of retroactivity of judicial decisions in *James B. Beam Distilling Co. v. Georgia*. Selective prospective application of new rules of law had already been abandoned in the criminal context in *Griffith v. Kentucky*, 479 U.S.

314 (1987). *Beam* extends this abandonment of selective prospectivity to the civil arena. Once a rule of law has been applied to the litigants in one case, it must now be applied to all other litigants whose claims are not barred by procedural requirements or *res judicata*.

The ruling in *Beam* limits the applicability of the retroactivity analysis set forth in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). The *Chevron Oil* test can no longer be utilized to determine on a case-by-case basis whether a new rule of law applied to one litigant will apply retroactively to another litigant based on the inequities that may arise from applying the new rule retroactively. It does not matter that the litigant may have relied on an old rule or that the new rule has a detrimental effect on a particular litigant. Principles of equality and *stare decisis* prevail over such equitable considerations.

The Petitioner contends that the lower court erroneously decided that *Beam* and *Lampf* overruled *Chevron Oil* and other cases regarding the equities of retroactivity in statute of limitations cases. This is an inaccurate characterization of the opinion below. The Court of Appeals made no such judgment. What the court said was that this Court in *Beam* " has expressly considered and rejected the use of equitable considerations as a basis for limiting the retroactive effect of a new decision (except, perhaps, in the new decision itself). . . ." *Lufkin v. McCallum, et al.*, 956 F.2d at 1107. Thus, rather than expressing an opinion that *Chevron Oil* had been overruled, the court below indicated that perhaps *Chevron Oil* was still applicable in deciding whether to apply a new rule retroactively in the first instance. Contrary to the Petitioner's contention, the Court of Appeals made no judgment with regard to the status of the *Chevron Oil* analysis that was not reflected in this Court's decision in *Beam*.

The Petitioner also contends that the lower court erroneously decided an important question of federal law that should be resolved by this Court in holding that the *Beam* decision is applicable to *Owens v. Okure*. Once again, the Court of Appeals did not decide a question of federal law. It merely applied a rule of federal law decided by this Court.

The *Beam* decision requires lower courts to ask two questions when determining whether a decision in a prior case is to be applied to the litigants before the court. Did the decision in the prior case announce a new rule of law? If so, did the court in the prior case apply the new law to the parties before the court? If both questions are answered affirmatively, then the prior decision is to be applied to the present case. The Court of Appeals conducted this analysis and correctly determined that *Owens v. Okure* did announce a new rule of law and that the new rule was applied to the litigants in that case. Thus, *Beam* required the court to apply the new rule announced in *Owens v. Okure* to the Petitioner's case.

Owens v. Okure finally answered a question that has plagued lower courts throughout the country for years – what is the appropriate statute of limitations for § 1983 actions? In passing 42 U.S.C. § 1983, Congress failed to specify a statute of limitations governing such actions. When no federal statutory limitations period is provided for federal causes of action, courts are to borrow state law limitations periods. 42 U.S.C. § 1988. This Court initially urged lower courts to adopt the limitations period of the state action most analogous to the particular § 1983 action. *Board of Regents, Univ. of N.Y. v. Tomanio*, 446 U.S. 478 (1980). The result was confusion and inconsistency among the lower courts. This Court attempted to resolve this confusion in *Wilson v. Garcia*, 471 U.S. 261 (1985). In *Wilson*, this Court instructed lower courts to adopt as the one statute of limitations for all § 1983 actions the state statute of limitations for injuries to personal rights. *Id.* at 278. This

eliminated the confusion and inconsistency in states with only one personal injury statute of limitations. But in states such as New York and Alabama, where there is more than one personal injury limitations period, the confusion persisted. *Owens v. Okure* finally brought this confusion to an end once and for all. The appropriate statute of limitations for § 1983 actions in states with more than one personal injury limitations period is the general or residual statute for personal injury actions. All states now know what statute of limitations to apply to § 1983 actions and there will now be consistency among the states. It is true, as Petitioner stated, that *Owens v. Okure* does not overrule *Wilson v. Garcia*. This does not mean, however, that *Owens v. Okure* did not announce a new rule.[1] It is certainly a new rule in states with more than one personal injury statute of limitations. It is certainly a new rule in the State of Alabama. In fact, this Court remanded *Jones v. Preuit & Mauldin*, the Eleventh Circuit case adopting Alabama's trespass to person statute of limitations as the limitations period governing § 1983 actions in Alabama, for reconsideration in light of *Owens v. Okure*. *Jones* was reversed on remand based on the new statute of limitations rule announced in *Owens v. Okure*.

The rule in *Owens v. Okure* was also new to the parties before this Court in that case. Neither the plaintiff nor the defendants knew what statute of limitations applied to plaintiff's § 1983 claims. The parties each argued to the court the statute of limitations most favorable to that party. In New York, the residual limitations period happened to benefit the plaintiff (whereas in Alabama the residual limitations period is less favorable to

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1. Petitioner is under the impression that *Beam* only applies to new rules which overrule clear past precedent. There is nothing in the *Beam* decision to support this assumption. Courts often announce new rules that merely clarify, modify, restrict, etc. prior rulings without overruling any clear past precedent. Such decisions nevertheless result in new rules which, if applied to the litigants in the case before the court, must be applied to all other litigants.

plaintiffs than the more specific personal injury limitations period). The Court of Appeals for the Second Circuit, applying *Wilson v. Garcia*, determined that the personal injury limitations period of the state action most analogous to § 1983 actions was the three year residual period. This Court affirmed the lower court opinion, but not on the grounds that the lower court opinion correctly applied *Wilson v. Garcia*. This Court affirmed the lower court decision because it was consistent with the new rule of law announced by the court in that case. Thus, this Court not only announced a new rule in *Owens v. Okure*, but it also applied that rule to the parties in that case. The *Beam* decision directs the Court of Appeals to therefore apply *Owens v. Okure* retroactively to the petitioner's action.

The Petitioner attempts to use Article III of the Constitution to limit the ruling in *Beam*. Article III allows this Court to hear only "cases or controversies." The Petitioner contends that this Court's decisions cannot be applied retroactively to litigants who are not "similarly situated" to the litigants in the deciding case without violating Article III by issuing an advisory opinion. Petitioner argues that he was not similarly situated to the plaintiff in *Owens* because their cases involved different issues of reliance and equities. Thus, *Owens* cannot be applied retroactively to Petitioner's case in spite of the *Beam* ruling.

Application of the statute of limitations announced in *Owens v. Okure* to the Petitioner's case does not violate Article III. The plaintiff in *Owens v. Okure* sued the defendants pursuant to 42 U.S.C. § 1983. The plaintiff claimed that his action was governed by the New York residual personal injury limitations period. The defendants asserted that plaintiff's claims were governed by the more specific personal injury limitations period. There was clearly a "case or controversy" before the court. The parties in *Owens* were similarly situated to every litigant in § 1983 lawsuits in states, such

as Alabama, with more than one personal injury statute of limitations. The Petitioner's legal arguments in support of his position regarding which personal injury statute of limitations governs § 1983 actions were certainly represented in *Owens*, although they happened to have been represented by the defendants in that particular case. The issues of reliance and equities for the plaintiff in *Owens* may not have been the same as those for the Petitioner. However, such equitable interests need not have been considered by the Court prior to announcing a new rule and applying the new rule to the litigants before the Court.

This Court did not conduct a *Chevron Oil* analysis prior to applying the new rule announced in *Owens* to the parties before the Court. Contrary to Petitioner's assertion, there is nothing in the *Beam* decision to indicate that such an analysis is required. Justice Souter did state in the plurality opinion in *Beam* that "the generalized enquiry permits litigants to assert, and the courts to consider, the equitable and reliance interests of parties absent but similarly situated." 111 S. Ct. at 2448. But this is a far cry from requiring a *Chevron Oil* analysis before applying a new rule to the parties before the court. Had it been "clear from *Beam* that the retroactivity analysis of *Chevron Oil Co. v. Huson* . . . must be utilized when a court makes its initial determination as to whether or not to apply a decision to the parties before the court when a new legal principal overruling clear past precedent is announced," as the Petitioner contends, then surely this Court would have conducted such an analysis in *Lampf*, a case which Petitioner admits changed the law on which the parties before the Court had relied to their detriment. *Lampf* was decided the same day as *Owens v. Okure*. In *Lampf*, this Court announced a new rule of law setting forth the proper statute of limitations to be applied to a claim under § 10(b) of the Securities Exchange Act and applied this new rule to the parties in that litigation without resort to a *Chevron Oil* analysis. It is inconceivable that this Court would have failed to

conduct a required analysis in a decision issued the same day as the decision setting forth such a requirement.[2]

This Court in *Owens v. Okure* was called upon to settle a "case or controversy" in which there were adverse parties actually before it. It did so. This Court's ruling in *Owens v. Okure* is now Supreme Court precedent to be followed by lower courts. That is exactly what the Court of Appeals for the Eleventh Circuit did in the opinion below.

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2. Petitioner assumes that this Court conducted such an analysis prior to applying the new rule announced in *Lampf* to the parties in that case. There is no language in the *Lampf* case to support such an assumption.

CONCLUSION

The Court of Appeals for the Eleventh Circuit in the opinion below did not erroneously decide important questions of federal law that should have been resolved by this Court. It did no more than apply the decisions of this Court which did resolve the important questions of federal law that were at issue in this lawsuit. *Owens v. Okure* announced a new rule of law – where state law provides multiple statutes of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions. This new rule was applied to the parties in that litigation. Once the court has applied a rule of law to the litigants in one case, according to *Beam*, it must do so with respect to all others not barred by procedural requirements or *res judicata*. The Court of Appeals, upon reading the *Lampf* opinion, issued the same day as *Beam*, found no reason to modify the application of *Beam* simply because a statute of limitations was at issue. Thus, the Court of Appeals applied *Owens v. Okure* to the litigants in this case. Since the lower court did not rule on any important question of federal law which had not already been decided by this Court, the petition for writ of certiorari should be denied.

Respectfully submitted,

INA B. LEONARD
Counsel of Record
CINDY S. WAID
Attorneys for Respondents